IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 24TH MAY 2007 / 3RD JYAISHTA 1929

WA.No. 1087 of 2007()

AGAINST THE JUDGEMENT IN WPC.1616/2007 Dated 26/02/2007
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APPELLANT/3RD RESPONDENT

K.M.HABEEB,
MURINGHALAYYATHU KIZZHAKKETHIL,
PAZHANKULAM WEST P.O. ADOOR TALUK.

BY ADV. SRI.C.B. SREEKUMAR

RESPONDENTS/RESPONDENTS 1,2,4 & PETITIONER:
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1. ADDITIONAL DISTRICT MAGISTRATE,
PATHANAMTHITTA.

2. THE ASST. EXECUTIVE ENGINEER,
ELECTRICAL SUB DIVISION, K.S.E.B. ADOOR.

3. SULTHAN,
MANNILAZHIKATHU PUTHEN VEEDU, KALLUMKADAVU,
PATHANAPURAM.

4. BINU M.KHAN,
S/O.AMIR KHAN, BINU BUILDING, PAZHANKULAM P.O.,
PALLIKKAL VILLAGE.

BY SR. GOVERNMENT PLEADER SMT. MEERA.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 24/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

W.A. No. 1087 of 2007

Dated this the 24th May, 2007

JUDGMENT

H.L. DATTU, C.J.

The third respondent in the Writ Petition is the appellant in the appeal. He is calling in question the correctness or otherwise of the judgment of the learned single Judge in W.P.(C) No.1616 of 2007 dated 26.02.2007.

2. The grievance of the appellant before us is that the petitioner in the Writ Petition/the contesting 4th respondent in this appeal, by taking advantage of the orders passed in the Writ Petition is trying to obstruct the right of pathway to the appellant's residence.

3. At this stage, we should notice that the appellant, before us, has already filed a civil suit before the civil court and the same is pending for consideration. The prayer in the suit is that the defendant in the suit shall not obstruct the pathway to the appellant's residence.

4. Learned counsel for the appellant submits that in view of the orders passed by this court in the Writ Petition, the civil court may not be in a position to decide the suit on merits.

5. The apprehension of the appellant, in our opinion, is not well founded. Even otherwise, if we direct the civil judge to decide the civil suit filed by the appellant, without being influenced by any of the observations made by this Court while disposing of the Writ Petition, no prejudice will be caused to the contesting respondent. In that view of the matter, the following:

Order.

i. Writ Appeal is disposed of.

ii. The learned Judge before whom the civil suit filed by the appellant is pending, is directed to decide the civil suit on merits without being influenced by any of the observations made by this Court while disposing of the Writ Petition No.1616 of 2007. Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

sk/DK.